

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no.:	690 of 2021
First date of hearing:	19.03.2021
Date of decision:	24.09.2021

Ravi Saini

R/o D-7, Airport Lane, Opp. Safdarjung Airport,
Data Ram Bhutani Marg, New Delhi- 110003.

Complainant

Versus

1. Indentity Buildtech Pvt. Ltd. @ formerly known as
Ansal Housing & Construction Ltd.

Office address: 110, Indraprakash, 21,
Barkhamba Road, New Delhi- 110001.

2. Joginder Chauhan C/o Ms. Mahi Realtors & Promoters

Office address: S-75, 2nd Floor, Manish Global Mall,
Sector-22, Dwarka, New Delhi-110075.

Respondents

CORAM:

Shri Vijay Kumar Goyal

Shri Samir Kumar

Member

Member

APPEARANCE:

Shri. Sonu Saini (Advocate)

Ms. Meena Hooda (Advocate)

Complainant

Respondents

ORDER

1. The present complaint dated 03.02.2021 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all



obligations, responsibilities and functions as provided under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Ansal Highland - Park" Sector-103, Gurugram
2.	Project area	11.7 acres
3.	Nature of the project	Residential
4.	DTCP license no. and validity status	32 of 2012 dated 12.04.2012 valid upto 11.04.2020
5.	Name of licensee	Identity Buildtech & another
6.	RERA registration details	Not registered
7.	Unit no.	KINRS-0903 (Page 27 of complaint)
8.	Unit measuring	1762 sq. ft.
9.	Date of execution of flat buyer agreement	18.06.2013 (Page 25 of complaint)
10.	Payment plan	Construction link payment plan (page 34 of complaint)
11.	Total consideration	₹ 74,67,931/- (As per builder buyer agreement dated 18.06.2013 at page 34 of complaint)
12.	Total amount paid by the complainant	₹ 74,70,241/-



		(As per statement of account dated 10.07.2020 at page 45 of complaint)
13.	Due date of delivery of possession as per clause 31 of the flat buyer's agreement 48 months from the date of execution of agreement or within 48 months from date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later + 6 months grace period. [Page 31 of complaint]	18.06.2017 (Note: As no approval/sanction has been placed on record by the respondent no.1, therefore, the due date of possession has been calculated from date of execution of builder buyer agreement i.e., 18.06.2013) (Note: Grace period not allowed)
14.	Delay in handing over possession w.e.f. 18.06.2017 till the date of this order i.e., 24.09.2021	4 years 3 months 6 days
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not yet offered

B. Facts of the complaint

3. The complainant pleaded the complaint on the following facts:

- a. That the complainant is resident of above-mentioned address, and the complainant is the purchaser/allottee of residential flats from respondent in the project named "Ansal Highland Park" sector-103, Gurgaon, Haryana. The present complaint is being filed by the complainant due to, the respondent failed to hand over possession



- within the stipulated time period as per the terms and conditions of the agreement.
- b. That the respondent no.1 is the company and respondent no. 2 is the authorised agent of Ansal Housing Ltd. respectively, the respondent no.1 had launched the project "Ansal Highland Park" by way of circulation of private brochures and advertising the said project as luxury flats in Gurugram. Pursuant to the assurances given by the respondent, many buyers had opted to invest their savings in the said project and so as the complainant.
- c. That the complainant booked the unit with the respondent in their project "Ansal Highland Park" bearing no. KINRS 0903, 22nd floor, by paying the amount of Rs. 3,24,793.88/- on dated 23.05.2012 and thereafter agreement was executed on 18.06.2013. It is relevant to mention here that the total basic sale price of the flat as per clause no.1 of the agreement was Rs. 67,58,611/-+EDC, IDC and others charges as per demanded. The complainant as on today had almost paid the entire amount/price of the flat i.e. Rs. 75,23,512/-.
- d. That as per clause 31 of the buyer's agreement, it was specifically stated that the construction of the unit will be completed and possession will be offered to the allottee/complainant within the commitment period, as per the definition of commitment period as defined in agreement the commitment period is 48 months. It is relevant to mention herein that the buyer's agreement was one-sided and heavily loaded in the favour of the respondent pointing out to the grave unfair trade practices being carried out by the respondent. Thus, from the simple calculation and bare perusal of clause -31 of the agreement, the agreed time frame for handing



over the possession of the flats in issue to the complainant by the respondent no.1 has already expired and the entire project has been delayed inordinately. There is no construction activity or development work going in the said project and same has come to a complete halt. It is further submitted that the work at the project has been delayed inordinately without any cogent justification and it is the absolute breach of the terms of the agreement by the builder, as the promised date for the possession was given by the builder i.e. 18.06.2017. It is therefore submitted that the time was the essence of agreement and therefore since the possession was not given by the builder within time, therefore, it is not obligatory nor feasible on the part of the complainant to take the possession after such a long delay and this amount to frustration of agreement on part of the builder as the material term of the agreement has been breached by the builder. The time being the essence of the contract, the complainant has become duly entitled for the refund of his money along with penal interest.

- e. That the complainant has at all time made payments against the demands of the respondent and as per payment schedule of the agreement pertaining to has flat, therefore the fraudulent act and conduct of the respondent needs to be penalized in accordance with the provision of the real estate (regulation and development) Act, 2016 (Hereinafter being referred as "the act").
- f. That since the respondent failed to give possession in time and the time being essence of the agreement, and further the respondent being not able to hand over possession in near future and the respondent fails to fulfil his commitments in that eventuality the



complainant wants to withdraw from the project of the respondent no.1 on account of misrepresentations, thus the complainant/allottees are entitled for refund of the deposited amount along with compound interest on the amount paid to the respondent at the rate of 18% per annum from date of making payments till the actual date of its realization and criminal prosecution is also liable to be initiated against the respondent as provided under the act.

- g. That due to deficiency in services committed by the respondent, the complainant has suffered huge financial losses, mental agony, trauma as his hard-earned money had been invested in the said project.

C. Relief sought by the complainant:

4. The complainant has sought following reliefs:

- a. Direct the respondent No.1 further pay interest at the rate of 18% till 31.12.2020 period of 42 months amounting to Rs. 47,06,251/- to the complainant.
- b. Direct the respondent No. 1 to pay further interest @ 18% from 01.01.2021 till the date of payment to be paid by Ansal Housing Ltd. to the complainant.

5. On the date of hearing, the authority explained to the respondent/promoters about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds:
- a. That the present complaint is neither maintainable nor tenable by both law and facts. It is submitted that the present complaint is not



maintainable before this hon'ble authority. The complainant has filed the present complaint seeking refund and interest. It is respectfully submitted that complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under section 71 of the Act read with rule 29 of the rules and not by this hon'ble authority.

- b. That the present complaint has no locus-standi and cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the apartment buyer's agreement dated 18.06.2013.
- c. That the respondent is a Public Limited Company registered under the companies Act, 1956, having its registered office at 606, Indraprakash, 21 Barakhamba Road, New Delhi-110001. The present reply is being filed by the respondent through its duly authorized representative named Mr. Vaibhav Chaudhary whose authority letter is attached herewith. The above said project is related to license no.32 of 2012 dated 12.04.2012, received from the Director General, Town & Country Planning, Haryana, Chandigarh (DGTCP) over the land measuring an area of 11.70 acres falling in the revenue estates of village Tikampura, District Gurugram and is the part of Sector-103 of Gurugram-Manesar Urban Development Plan-2021. The land under the said project named "Ansals Highland Park" is owned by developer's wholly owned subsidiary company named M/s Identity Buildtech Pvt. Ltd., (Identity) and M/s Agro Gold Chemicals Pvt. Ltd. (AGCPL) having



their registered offices at B-1/1345, Vasant Kunj, New Delhi-110070.

- d. That the complainant approached the respondent sometime in the year 2012 for the purchase of an independent unit in its upcoming residential project "Ansals Highland Park" situated in sector-103, Village Tikampur, Gurugram. It is submitted that the complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainant was fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the complainant took an independent and informed decision to purchase the unit, uninfluenced in any manner by the respondent.
- e. That thereafter, the complainant vide application form dated 04.06.2012 applied to the respondent for provisional allotment of a unit in the project. The complainant, in pursuance of the aforesaid application form, was allotted an independent unit in the project, namely, Ansals Highland Park, situated at Sector-103, Gurugram. The complainant consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainant shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant. The complainant further undertake to be bound by the terms and conditions of the Application Form and the agreement as well.



- f. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is swing on full mode and the work will be completed within prescribed time period had there been no force majeure.
- g. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainant within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in civil writ petition no. 20032 of 2008 through which the shucking/extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing air quality index being worse, maybe harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the main factors to delay in giving possession to the home buyers as demonetization caused abrupt. stoppage of work in many projects. The payments especially to workers to only by liquid cash. The sudden restriction on withdrawals led the respondent unable to cope with the labour pressure. However, the respondent is carrying its business in letter and spirit of agreement as well as in compliance of other local



bodies of Haryana Government as well as Government of Haryana or the Centre Government, as the case may be.

- h. That, it is submitted that the complaint is not maintainable or tenable under the eyes of law, as the complainant have not approached the hon'ble authority with clean hands and have not disclosed the true and material facts relates to this case of complaint. The complainant, thus, have approached the hon'ble authority with unclean hands and have suppressed and concealed the material facts and proceedings which has direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings the question of entertaining the present complaint would have not arising in view of the case law titled as *S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994 (1) SCC Page-1* in which the Hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud on not only the opposite party, but also upon the Hon'ble adjudicating officer and subsequently the same view was taken by even Hon'ble National Commission in case titled as *Tata Motors Vs. Baba Huzoor Maharaj bearing RP No.2562 of 2012 decided on 25.09.2013.*
- i. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing



projects which registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the agreement. It is further submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the agreement. However, in view of the law as laid down by the Hon'ble Bombay High Court in case titled *as Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India published in 2018(1) RCR (C) 298*, the liberty to the promoters/developers has been given U/s 4 to intimate fresh date of offer of possession while complying the provision of section 3 of RERA Act as it was opined that the said Act named RERA is having prospective effect instead of retrospective. Para No. 86 and 119 of the above said citation are very much relevant in this regard.

- j. It is further submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the agreement.
- k. That without prejudice to the contentions of the respondent, it is submitted that the present complaint is barred by limitation. The complainant has alleged that due date of possession in respect of the said unit was 16.10.2017, and therefore, no cause of action is arisen in favour of the complainant on 16.10.2017, and thus, the



present complaint is barred by law of limitation and the hon'ble authority lacks jurisdiction. It is also a conceded and admitted fact that the project related to the present complaint has already been registered with RERA and more than 200 buyers have already been settled, meaning to say that demands of more than 200 buyers have duly been satisfied by the respondent by giving them the respective units, and as such the hon'ble authority also lacks jurisdiction.

- i. That several allottees, including the complainant has defaulted in timely remittance of payment of instalment which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. Furthermore, when the proposed allottees defaulted in their payment as per schedule agreed upon, the failure has a cascading effecting on the operation and the cost for proper execution of the project increase exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees have diligently and earnest pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is further submitted that the respondent had applied for registration with the authority of the said project by giving afresh date for offering of possession, however, in this case the complainant has already been offered the possession by the respondent. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant is totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.



m. That, it would be relevant to mention here in case titled as **Mr. Abhishek Mohan Gupta Vs. Mis Ireo Grace Realtech (Pvt.) Ltd., complaint No.2044 of 2018**, date of first hearing 12.03.2019, decided on 12.03.2019 by the hon'ble authority, in para no.36, it was held by the hon'ble authority came across that as per clause 13.3 the respondent has agreed to offer the possession of the said apartment within a period of 42 months from the date of approval of building plans and/or fulfilment of preconditions imposed thereunder + 180 days grace period. The building plan for the project in question was approved on 23.07.2013 which contained a precondition under clause 17(iv) that respondent should obtain clearance from Ministry of Environment and Forest, Government of India before starting construction of project. The said environment clearance for the project in question was granted on 12.12.2013 containing a pre-condition of obtaining fire safety plan duly approved by fire department before starting construction. The respondent obtained the said approval on 27.11.2014. Therefore, the due date of possession comes out to be 27.11.2018 and the possession has been delayed by 3 months and 13 days till the date of decision...."

7. Copies of all the relevant documents have been files and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

8. The respondents have raised an objection with regard to jurisdiction of the authority for entertaining the present complaint and the said plea of



the respondents stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I. Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E. II. Subject matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plot or buildings, as the case may be, to the allottees are executed.

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.



11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant

F.I. Delay possession charges

12. **Relief sought by the complainant:** Direct the respondent no.1 to pay interest at the rate of 18% till 31.12.2020 period of 42 months amounting to Rs. 47,06,251/- to the complainant and direct the respondent no. 1 to pay further interest @ 18% from 01.01.2021 till the date of payment to be paid by Ansal Housing Ltd. to the complainant
13. In the present complaint, the complainant intends to continue with the project and is seeking delayed possession charges @ 18% interest on the amount paid. Clause 31 of the flat buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

"31. The Developer shall offer possession of the Unit any time, within a period of 48 months from the date of execution of Agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by Buyer and subject to force-majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the Developer over and above the period of 48 months as above in offering the possession of the Unit."

14. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as



prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

15. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the subject unit within a period of 48 months from date of agreement or the date of commencement of construction which whichever is later plus grace period of 6 months. As no approval/sanction has been placed on record by the respondent no.1, therefore, the due date of possession has been calculated from date of execution of builder buyer agreement i.e., 18.06.2013. The period of 48 months expires on 18.06.2017. Since in the present matter the builder buyer's agreement incorporates qualified reason for grace period/extended period of 6 months in the possession clause for obtaining occupation certificate subject to force majeure. The force majeure reasons provided by the promoter are not taken into consideration by the authority as the promoter has still not applied for



occupation certificate, this quiescent act of promoter cannot be ignored and accordingly, this grace period of 6 months shall not be allowed to the promoter at this stage.

16. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

17. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
18. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 24.09.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
19. **Rate of interest to be paid by complainant for delay in making payments:** The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the



allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

20. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondent no.1/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
21. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent no.1 is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 31 of the agreement executed between the parties on 18.06.2013, the possession of the subject unit was to be delivered within a period of 48 months from date of agreement or the date of commencement of construction which whichever is later plus grace period of 6 months. As no approval/sanction has been placed on record by the respondent no.1, therefore, the due date of possession has been calculated from date of execution of builder buyer agreement i.e., 18.06.2013. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of



handing over possession is 18.06.2017. The respondent no.1 has not offered the possession of the subject unit till date. Accordingly, it is the failure of the respondent no.1/promoter to fulfil its obligations and responsibilities as per the builder buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent no.1 is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 18.06.2017 till the handing over of possession, at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules after obtaining OC.

G. Directions of the authority

22. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

- a. The respondent no.1 is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 18.06.2017 till the handing over of possession after obtaining OC.
- b. The arrears of such interest accrued from 18.06.2017 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.



- c. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- d. The rate of interest chargeable from the complainant-allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent no.1/promoters which is the same rate of interest which the promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- e. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent shall not demand/claim holding charges from the complainant/allottee at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
23. Complaint stands disposed of.
24. File be consigned to registry.


(Samir Kumar)
Member

HARERA
GURUGRAM


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.09.2021

Judgement uploaded on 16.12.2021.